IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-01932

REBECCA LADNER **APPELLANT**

VS.

MICHAEL HOLLEMAN **APPELLEE**

ON APPEAL FROM THE CIRCUIT COURT OF THE HARRISON COUNTY, MISSISSIPPI, FIRST JUDICIAL DISTRICT
CAUSE NO. A2401-08-00185

BRIEF OF THE APPELLEE

(ORAL ARGUMENT NOT REQUESTED)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certify that the following listed persons have an interest in the outcome of this case. The representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Appellant/Plaintiff Rebecca Ladner
2. Appellee/Defendant Michael Holleman, Esq.
3. William Alex Brady, II, Esq., Attorney for Appellant/Plaintiff
4. Edward J. Currie, Jr., Esq., Jeremy T. Hutto, Esq., and Currie Johnson Griffin Gaines & Myers, P.A., Attorneys for Appellee
5. Tim C. Holleman, Esq., and Boyce Holleman & Associates, Attorney for Appellee

This the 7th day of September, 2011.

MICHAEL HOLLEMAN, APPELLEE

By: _____
Edward J. Currie, Jr. (MSB [redacted]
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STATEMENT OF THE ISSUE

I: THE JUDGMENT OF THE LOWER COURT CORRECTLY FOUND THAT LADNER FAILED TO PRESENT A GENUINE ISSUE OF MATERIAL FACT WITH REGARD TO THE CLAIM ARISING FROM LADNER'S FALL IN HOLLEMAN'S HOME

STATEMENT OF THE FACTS

On June 12, 2005 Michael Holleman ("Holleman") invited Rebecca Ladner ("Ladner") to his home for a bicycle ride. (T.R. at 47);(R.E. at 26.) The bicycle ride began from Holleman's home shortly before noon and lasted until about four o'clock in the afternoon and encompassed approximately 12 miles. (T.R. at 181; R.E. at 115.) When Ladner had ridden approximately five-tenths to seven-tenths of a mile from Holleman's home, she fell from her bicycle. (T.R. at 176; R.E. at 110.) Ladner sustained scrapes to her left knee, left elbow and left shoulder as a result of her fall from the bicycle. (T.R. at 177; R.E. at 111.) Immediately after Ladner's fall from the bicycle, Holleman asked Ladner if she wanted to continue the ride, or whether she wanted to return to Holleman's home [which was less than one mile away] and treat her scrapes. (T.R. at 182; R.E. at 116.) Ladner responded that she wanted to continue the bicycle ride. (T.R. at 182; R.E. at 116.) During the entirety of the 12 mile bicycle ride, Ladner drank one bottle of water that was provided to her by Holleman. (T.R. at 181; R.E. at 115.)

Upon returning to Holleman's home, Ladner contends that Holleman suddenly and without her invitation applied Neosporin to the abrasions to her knee and elbow while she was drinking a Diet Coke. (T.R. at 183; R.E. at 117.) Ladner contends that following the application of the Neosporin, she felt a tingling sensation in her lips and began to feel swelling. (T.R. at 184; R.E. at 118.) Ladner had never experienced an allergic reaction to Neosporin or any type of first-aid ointment before this incident, even though Ladner admits that she had used Neosporin before this incident. (T.R. at 182; R.E. at 116.) Ladner thereafter laid on Holleman's living room floor while Holleman went to a store and purchased Benadryl.

Upon his return, Holleman gave Ladner Benadryl that helped her condition. (T.R. at 185, 187; R.E. at 119, 121.) After taking the Benadryl, Ladner continued to lay on Holleman's floor for approximately two hours. (T.R. at 188; R.E. at 122.)

Holleman subsequently went into his master bathroom to warm some water for a cloth to remove the Neosporin. Holleman then asked Ladner, "...Rebecca, can you come in here?" (T.R. at 215; R.E. at 149.) It was after asking Ladner if she could come to the bathroom that Ladner apparently fell. Although Ladner has no memory of getting or standing up, at some point she sustained a fall. Ladner testified that she does not how or why she fell.

Q. All right. And tell - - tell us how it was that you fell. What happened?

A. I don't recall other than trying to sit up. I sat up and - - and I must have stood. I don't know. I don't recall.

Q. And your testimony is you do not know how it was you came to fall.

A. Exactly.

Q. Have you ever remembered? In other words, is it something that your memory comes and goes on what happened?

A. No. No.

Q. So you've never known that - - how you fell.

A. No.

Q. Okay. All you know is, is that you're lying on the floor, and the next thing you know, you're somewhere different and you have already fallen? Is that your testimony?

A. Correct.

(T.R. at 188-189; R.E. at 122-123.)

Following her fall, Holleman helped Ladner to lie down and she was able rest. (T.R. at 190; R.E. at 124.) After resting for approximately an hour and a half, Ladner got up under her own power and drove

herself home. (T.R. at 192; R.E. at 126.) Ladner never attempted to call an ambulance herself. (T.R. at 193; R.E. 127.) On her drive home, Ladner drove past Gulfport Memorial Urgent Care Clinic without stopping. (T.R. at 193; R.E. at 127.) Ladner never went to any emergency room nor sought medical treatment immediately after leaving Holleman's home. (T.R. at 194; R.E. at 128.)

In her Complaint, the Plaintiff presents two separate claims to the lower court, one arising from her bicycle fall that she alleges was caused by a faulty steering mechanism, and a second claim arising from her fall inside Holleman's home. (See T.R. at pgs. 33-38; R.E. at 12-17.) Following discovery, Holleman filed his Motion for Partial Summary Judgment seeking a dismissal of the Plaintiff's claim arising from her fall in Holleman's home. (T.R. at pgs. 22-32; R.E. at 1-11.) After the lower court granted Holleman's Motion for Partial Summary Judgment, this appeal followed.

SUMMARY OF THE ARGUMENT

This case is about minor scrapes that occurred in a minor bicycle accident. Holleman applied a common household antibacterial medicine, Neosporin, to Ladner's scrapes, as is done virtually every day in homes in Mississippi to children and adults alike without incident. Neither Ladner nor Holleman had any inkling that such a common act would bring this matter before this Honorable Court. Ladner claims, without any supporting medical proof whatsoever, that she had an allergic reaction to the Neosporin. Ladner then decided to lay down on Holleman's den floor. While Ladner was resting on the floor, Holleman rushed to the pharmacy to get Benadryl, commonly known to counter-act allergic reactions. Holleman gave the Benadryl to Ladner and she admits that it helped her purported allergic reaction. Approximately two hours later, Holleman asked Ladner if she could come to the bathroom to wash off the Neosporin. Holleman did not make Ladner get up, nor did Ladner refuse to get up. Ladner claims that she fell while trying to get up, but does not know how or why she fell two hours later after taking the Benadryl.

One must resort to sheer speculation as to the cause of her fall. Did she lose her balance; trip;

stumble; suffer a vasovagal syncope (fainting); faint after suddenly rising from the floor; was she dehydrated after a 12-mile bicycle ride in the heat of the summer? Approximately two hours passed from the time the Benadryl was taken, and even longer than this after the Neosporin was applied, until she fell. Ladner failed to offer any medical testimony or opinion as to the cause of her fall. Likewise, Ladner failed to offer any evidence, medical or otherwise, which sheds any light as to any causal connection between her alleged allergic reaction to the Neosporin and her fall. Instead, Ladner simply argues that Holleman should have called an ambulance. However, Ladner provides no medical evidence of any kind to explain what difference an Emergency Medical Technician would have made had an ambulance been called, or that an EMT would have done anything different than what Holleman did. Ladner offered no proof causally connecting an alleged failure to call for an ambulance with her fall. Therefore, any arguments as to duty, if any, are irrelevant because Ladner failed to prove the proximate cause of her fall. Ladner failed to prove that Holleman breached any duty even under her alternate theory of recovery based upon the Good Samaritan Statute, Miss. Code § 73-25-37. Ladner's argument that an allergic reaction caused her to fall is nothing more than a *post hoc ergo propter hoc* argument that is unsound as evidence or law and cannot serve as the basis for proximate causation.

The lower court correctly found that Ladner was a mere licensee while inside of Holleman's home and that Ladner failed to present any evidence that any of Holleman's actions were willful or wanton. Ladner argues that her claim is not a premises liability claim, but instead, a simple negligence claim arising from Holleman's purported unilateral application of Neosporin to her abrasions. Ladner's argument is without merit. The basis of Ladner's claim is that she fell and sustained injuries while in Holleman's home. Because Ladner has no proof what caused her to fall, her fall and purported injuries must be considered due to "conditions or activities" on Holleman's property. The lower court thus properly found that Ladner's claim is one of premises liability. *See* Doe v. Jameson Inn, Inc., 56 So.3d 549, 553 (¶11) (Miss. 2011.)

Holleman respectfully requests this Court to affirm the lower court's grant of Holleman's Motion for Partial Summary Judgment.

ARGUMENT

I: PROXIMATE CAUSE MUST BE PROVED NO MATTER WHAT DUTY OF CARE IS APPLIED

Ladner argues that the lower court incorrectly applied a willful and wanton duty of care to her claim instead of the reasonable care-good faith standard applicable under the Good Samaritan Statute, Miss. Code §73-25-37. The lower court, however, correctly found that Ladner was a licensee at the time of her fall, and that there was no evidence that Holleman acted willfully or wantonly. Even if the lower court had applied the reasonable care standard under the Good Samaritan Statute, Ladner's claim still fails because there is no proof of what caused her to fall inside of Holleman's home, and there is no proof that Holleman violated any standard of care. No one knows, and there is no direct, circumstantial or opinion evidence on causation. In order to prevail on a negligence claim, a Plaintiff must prove by a preponderance of the evidence each element of negligence: duty, breach of duty, proximate causation and injury. *Schepens v. City of Long Beach*, 924 So.2d 620, 623 (¶9) (Miss.App. 2006); *citing K-Mart Corp. v. Hardy ex rel. Hardy*, 735 So.2d 975 (¶14) (Miss. 1999.) Thus, Ladner's failure to prove the proximate cause of her fall is dispositive of the present appeal[1].

Ladner speculates that "...due to the profound allergic reaction she experienced, she was unable to

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[1]The lower court did not specifically address proximate cause in its ruling, but that is of no event because Holleman presented several grounds in support of his Motion for Partial Summary Judgment to the Lower Court, including that Ladner failed to offer any evidence of what caused her to fall in Holleman's home. (T.R. at 72-75; 126-127; R.E. at 51-54; 60-61.) The Mississippi Supreme Court has held that a defendant on appeal is entitled to raise any alternative ground based upon the pleadings in the court below which would support the judgment on appeal, and if the judgment of dismissal was correct on any ground raised by the pleadings in the lower court, the same will be affirmed. *See Brocato v. Miss. Publishers Corp.*, 503 So.2d 241, 244 (Miss. 1987);(*citing Briggs v. Benjamin*, 467 So.2d 932, 934 (Miss. 1985);*Huffman v. Griffin*, 337 So.2d 715, 723 (Miss. 1976.))

stand on her own, which caused her to fall." (See Ladner's brief at page 4.) This statement is nothing more than a repeat of the allegation in paragraph 14 of Ladner's complaint (T.R. at 34; R.E. at 13.), and directly contradicts Ladner's own deposition testimony, quoted above, that she has no memory of even getting up nor what caused her to fall.

A Plaintiff who falls on premises in a negligence action must be able to show what caused him or her to fall in the first place. In *Rod v. Home Depot USA, Inc*[2]., 931 So.2d 692, 693 (¶¶2-6) (Miss.App. 2006), Rod slipped in a Home Depot in Gulfport. Rod brought suit against Home Depot alleging that Home Depot was negligent. During her deposition, however, Rod "...admitted that she did not know what caused her to slip and/or trip." *Id.* at (¶3). The trial court granted summary judgment to Home Depot, which was appealed by Rod.

The Court of Appeals affirmed the summary judgment granted to Home Depot, holding that "Rod repeatedly stated during her deposition that she could not remember what caused her to fall." "Thus, Rod offered no proof that her injury was the result of an affirmative act of negligence by Home Depot..." *Id.* at (¶13.) The Court also agreed with the trial court's determination that Rod's "speculation as to what caused the accident [could] not supply the factual support necessary to show that the [Rod] would be able to meet her evidentiary burden at trial." *Id.* at (¶14.)

Home Depot is directly on point. Because Ladner does not know how or why she fell, one is left to only speculate as to what may have caused her to fall. Was it simply a case of unexplained syncope? Did she trip and stumble? Did she lose her balance while trying to stand up? Did the blood rush from her head upon rising from the floor? Was she dehydrated from a 12-mile bicycle ride in the heat of the summer? Was there some other medical condition unrelated to any alleged allergic reaction? One can only speculate.

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[2]The Plaintiff in *Rod v. Home Depot* was an invitee, but Ladner was undisputedly a licensee while she was inside of Holleman's home. See page 18 of Ladner's Appellate Brief.

Ladner does not know, and has never known, what caused her to fall. Ladner presented no medical testimony that she even had an allergic reaction or that, if she did, it would somehow have affected her over two hours later. Because the record is devoid of supporting evidence, the assertion in Ladner's brief that an allergic reaction caused her to fall is insufficient to survive summary judgment. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." M.R.C.P. 56(e). Ladner has failed to prove that any alleged affirmative action or omission of Holleman, or that any condition in his home, caused her to fall. The lower court's ruling should be affirmed.

II. LADNER MUST STILL PROVE PROXIMATE CAUSE UNDER THE GOOD SAMARITAN STATUTE, MISS. CODE § 73-25-37, AND EVEN IF THE REASONABLE CARE- BAD FAITH STANDARD IS APPLIED, LADNER FAILED TO PROVE THAT HOLLEMAN BREACHED ANY DUTY

The lower court properly determined that Ladner's fall inside of Holleman's home is a premises liability claim. Ladner urges that the lower court incorrectly applied the duty owed to a licensee and that the lower court should have applied a reasonable care standard as provided in Mississippi's Good Samaritan Statute codified at Miss. Code § 73-25-37[3]. In support of this argument, Ladner's brief focuses on conduct that occurred two hours or more *before* her fall, and Ladner's purported allergic reaction from a common household antibiotic, Neosporin. However, Ladner's claimed injures and damages undisputedly arise solely from her fall. There is no medical or other expert testimony that any purported allergic reaction she may have experienced more than two hours earlier from the application of the Neosporin proximately caused her fall. Thus, Ladner's discussion of Holleman's alleged actions and/or omissions prior to her fall are

[3]To the contrary, the Good Samaritan Statute does not establish a simple reasonable care standard as discussed *infra*, it employs a reasonable care plus bad faith standard.

immaterial. Therefore, even for the sake of argument should this Court determine that the reasonable care standard set forth in the Good Samaritan Statute applies instead of the willful and wanton standard applicable to a licensee, Ladner's claim still fails for lack of proximate cause. Furthermore, Ladner has not presented any evidence that Holleman's alleged actions breached any duty of care with regard to the fall, whether analyzed under a willful and wanton or the standard set forth in the Good Samaritan Statute.

Ladner cites *Dyche v. Vicksburg S. & P. R. Co.*, 79 Miss. 361 (1901), *Long v. Patterson*, 22 So.2d 490, 492 (Miss. 1945), and authority from jurisdictions outside Mississippi for the general proposition that "[o]ne who undertakes to care for an ill or injured person is bound to use reasonable or ordinary care." (See page nine (9) of Ladner's Appellate Brief.) This proposition goes only to the applicable standard of care, and it is not the standard of care set forth in the Good Samaritan Statute. Proximate cause still must be proved. Even so, Ladner's reliance on these authorities under the facts of her case are misplaced.

Dyche is inapplicable because it dealt with duties in relation to a common carrier. Mississippi law holds that a common carrier owes the highest degree of care to its passengers. *See Boyd Tunica, Inc. v. Premier Transp. Services, Inc.*, 30 So.3d 1242, 1251 (¶24) (Miss.App.2010). The case *sub judice* involves no such situation[4]. *Long v. Patterson*, 22 So.2d 490, 492 (Miss. 1945) is also inapplicable to the case at bar. *Long* arose from a tractor trailer collision in which Patterson was killed. Patterson was driving a tractor at night with no lights and had a fourteen year old minor, Jones, riding on the fender keeping watch for traffic approaching from the rear. A cattle truck driven by Martin collided with the rear of Patterson's tractor and he was killed. The issue in *Long* was whether there is a duty for any person to warn another of an approaching or impending danger. Ladner's case is not a failure to warn case.

Ladner also cites a Louisiana Court of Appeals case styled *David v. Southern Farm Bureau Casualty,*

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[4]Ladner does not dispute that she was a licensee while she was in Holleman's home. *(See* page 18 of Ladner's Appellate Brief.)

Ins., 122 So.2d 691, 693 (La.Ct.App. 1960) to argue that Holleman owed a duty of reasonable care once he undertook to render aid to Ladner. *David*, relying upon 65 C.J.S. *Negligence* § 58 and Restatement (Second) of Torts § 324, held, in part, that one who undertakes to render aid to another is subject to liability to the other *for bodily harm caused to him by aid.* *Id.* at 694. (emphasis added.) First, *David* and the *C.J.S.* and *Restatement* provisions cited in *David*, do not support Ladner's argument because Ladner cannot prove than any "aid" provided to Ladner by Holleman caused her to fall. Second, *David* is inapplicable in any event due to enactment of the Good Samaritan Statute, which adopts an entirely different standard of reasonable care and requires a showing of bad faith.

Ladner, without any evidentiary support opines, "The duty to provide proper care and attention is fully performed by taking the injured person to a competent physician, hospital, or infirmary." *David*, 122 So. 2d at 693. Notwithstanding the fact that no such duty is required in our Good Samaritan Statute, the record fails to demonstrate that even this unsupported argument is proximately related to her fall. It contradicts her own actions following her fall in Holleman's home. Ladner admitted in her deposition that she never called an ambulance for herself; that she drove past Gulfport Urgent Care Clinic on her way home from Holleman's home but did not stop; and she never went to an emergency room after leaving Holleman's home. Ladner testified:

Q: And is it true that you would have passed by Gulfport Memorial Urgent Care center on your way home?

A: If - - I would have, yes.

Q: Okay. Did you stop there?

A: No.

[Omitted Lines]

Q: Before you walked to your car, did you go to his phone and call an ambulance?

A: No.

Q: Did you ever attempt to call an ambulance yourself?

A: No.

Q: The entire time you were in his house.

A: No.

[Omitted Lines]

Q: All right. And did you drive yourself to the hospital that day?

A: No.

Q: Did you ever drive yourself to the hospital after June 12, 2005?

A: To the doctor.

Q: I'm talking about to the emergency room of the hospital.

A: No.

(See T.R. at 193-194; R.E. at 127-128.)

Mississippi's Good Samaritan Statute provides in relevant part, "...No...person who, in good faith and in the exercise of reasonable care, renders emergency care to any injured person at the scene of an emergency...shall be liable for any civil damages to the injured person as a result of any acts committed in good faith and in the exercise of reasonable care or omissions in good faith and in the exercise of reasonable care..." Miss. Code § 73-25-37 (emphasis added). Ladner's reliance on the Good Samaritan Statute fails in several key aspects. The Good Samaritan Statute predicates any cause of action upon two elements: lack of good faith and reasonable care. Ladner offers no proof that Holleman failed to act reasonably, but more importantly, that he acted in bad faith. In *Limbert v. Mississippi University for Women Alumnae Ass'n, Inc.*, 998 So.2d 993, 998 (¶10) (Miss. 2009), this Court held:

Bad faith has been defined by this Court as requiring "a showing of more than bad

faith or negligence; rather, "bad faith" implies some conscious wrongdoing "because of dishonest purpose or moral obliquity." *Id.*; *citing* Univ. of S. Miss. v. Williams, 891 So.2d 160, 170-71 (Miss. 2004)(*quoting* Bailey v. Bailey, 724 So.2d 335, 338 (Miss. 1998.))

Ladner wholly fails to offer any proof that Holleman consciously committed a wrongful act because of any "dishonest purpose or moral obliquity." While Ladner fails to describe exactly when the "scene of an emergency" was present, Holleman presumes that Ladner is referring to her purported allergic reaction to the Neosporin. According to Ladner, after she began experiencing the allergic reaction, she laid on the floor. Holleman left and shortly returned with Benadryl. See page 13 of Ladner's brief. Shortly after Holleman gave Ladner the tablet of Benadryl, Ladner began to feel better.

Q. All right. What happened when Mike got back?

A. He raised my - - raised my head. I did - - don't - - raised my head, and he put a pill in my mouth and gave me water, and I was able to swallow the pill.

[omitted lines]

Q. Well, did you feel any differently after you took the pill?

A. Not - - after some time, the - - my throat began to relax.

[Omitted Lines]

Q. No, I - - my question was until you took the Benadryl you were having difficulty breathing.

A. Correct.

Q. But after you took the Benadryl, that difficulty got less.

A. The - - the entire - - over the entire time, it had peaked and began to subside. I can't say when it started to subside. It was - -

Q. But it was after you took the Benadryl.

A. Yes, it was after I took the Benadryl.

(See T.R. at 186-187; R.E. at 120-121.)

The facts, on the other hand, provides only inferences of reasonable care and good faith. Ladner's testimony demonstrates that Holleman's action in giving her the Benadryl tablet helped her allergic condition. Thus, Ladner has failed to present evidence, medical or otherwise, that any of Holleman's actions were unreasonable or in bad faith. As to the claim that Holleman should have called an ambulance, Ladner presents no medical evidence to demonstrate what more an EMT or physician would have done to help her allergic reaction. In fact, Ladner testified that she never attempted to contact an ambulance or secure emergency medical care. Thus, she did nothing more for herself than she purports that Holleman should have done. More importantly, Ladner fails to offer any proof whatsoever that any of these alleged actions of Holleman are what caused her to fall. This issue is without merit.

III. LADNER'S ALLEGED ALLERGIC REACTION WAS NOT REASONABLY FORESEEABLE

Ladner's allergic reaction was not foreseeable as Ladner herself admitted that she had never suffered an allergic reaction to any first-aid ointments prior to this instance in Holleman's home.

Q: Okay. To the best of your knowledge - - well, when you had used Neosporin on prior occasions, you had not suffered any type of allergic reaction whatsoever.

A: No.

Q: Had you ever suffered any type of allergic reaction whatsoever to any type of first-aid ointment prior to this day?

A: No.

(See T.R. at 182; R.E. at 116.) As such, Holleman had no notice or warning before he applied the Neosporin.

Ladner cites *Spotlite Skating Rink, Inc. v. Barnes*, 988 So.2d 364 (Miss. 2008) as the controlling case on the issue of foreseeability. Ladner's reliance is misplaced. *Barnes* involved a ten-year old skating rink patron who repeatedly fell while skating on the premises of Spotlite Skating Rink. *Id.* at (¶2). Barnes

subsequently died when an undiagnosed colloid cyst became dislodged and blocked the flow of spinal fluid from her brain. Barnes' estate filed a premises liability suit against the skating rink alleging negligent supervision and failure to render aid. The Supreme Court affirmed the jury's verdict for Plaintiffs holding that "...a fall resulting in a head injury was a reasonably foreseeable consequence of a lack of supervision." *Id;* at (¶15.)

Barnes was a negligent supervision [premises liability] case involving a minor invitee in a skating rink. This Court held that it was foreseeable under the particular facts of that case that Barnes, a child of tender years, might fall and sustain a head injury at a crowded skating rink absent supervision. In contrast, Ladner is not a minor and she was not skating. She had been lying on the den floor in Holleman's home for approximately two hours. Furthermore, while Ladner argues that her claim is not based upon premises liability, *Barnes* is a premises liability case applying a different duty of care because Barnes was a business invitee and Ladner was undisputedly a licensee. Thus, *Barnes* provides no support for the contention that Ladner's allergic reaction was foreseeable.

Mississippi law does not impose upon an alleged tortfeasor the responsibility to anticipate or prevision an extraordinary occurrence. *See* Rolison v. City of Meridian, 691 So.2d 440, 444 (Miss. 1997)(holding that ordinary care does not require that a person prevision unusual, improbable, or extraordinary occurrences.) Even assuming for the sake of argument only that Ladner's fall was caused by an allergic reaction [which is pure speculation], there is no evidence that Ladner's fall some two hours after the onset of the allergic reaction was foreseeable. In fact, Ladner testified that after lying on the floor two hours and taking the Benadryl Holleman had secured, her condition improved. (See T.R. at 185; R.E. at 119.) Accordingly, Ladner's subsequent fall was not foreseeable.

IV. LADNER'S FALL IS A PREMISES LIABILITY CLAIM

Without citation of any legal authority, Ladner contends that her claim is not based upon premises

liability. Ladner argues, "Any argument of premises liability, or that Ladner was a licensee, in support of Holleman's Motion for Partial Summary Judgment is simply missing the point, in that Ladner made no such claim of negligence based upon the legal theory of premises liability." (See page 18 of Ladner's Appellate Brief.) This argument fails for several reasons. First, because there is no proof why Ladner fell, nor any proof that application of the Neosporin or failure to call an ambulance is proximately related to her fall, the Court can only speculate whether the fall was in fact related to a condition of the premises or as a result of Neosporin, or some other cause not related to either. All that is known is that there was an apparent fall. Second, this argument is not supported by the applicable law, because to follow Ladner's position to its logical conclusion would require this Court to abolish the invitee, licensee, and trespasser distinctions and instead apply only a reasonable person standard to premises liability cases.

"Mississippi follows the practice of classifying a person who enters the land of another as an invitee, licensee, or a trespasser in order to establish what duty, if any, the landowner or landlord owes a person who is injured on the premises." Titus v. Williams, 844 So.2d 459, 465 (¶17) (Miss. 2003); *citing* Hudson v. Courtesy Motors, Inc., 794 So.2d 999, 1003 (Miss. 2001). In *Titus*, the Plaintiffs asked the Court to "... abolish these [invitee, licensee, and trespasser] distinctions when deciding a premises liability action. They contend the classifications should be replaced with a reasonable person standard." Id. In rejecting the Plaintiffs' argument, the Mississippi Supreme Court held that "This Court has recently declined an invitation such as that urged by plaintiffs. *See* Pinnell v. Bates, 838 So.2d 198 (Miss. 2002). In *Pinnell,* we stated: "There is no compelling reason to change our time honored law on premises liability now. The distinctions between licensee and invitee have been developed over many years and are grounded in reality." Id. at 199. "This reasoning remains persuasive. We again decline to abandon the invitee, licensee, and trespasser distinctions." Id.; *see also* Little by Little v. Bell, 719 So.2d 757, 763 (¶27) (Miss.1998)(where Court refused to abolish the common-law distinctions of trespassers, licensee, and invitee and instead apply an ordinary

and reasonable standard of care.)

Ladner's claim is based on an alleged condition or activity on Holleman's premises and thus can only be classified as a premises liability claim. In Doe v. Jameson Inn, Inc., 56 So.3d 549 (Miss. 2011), Ann Doe was raped in a motel room on the premises of the Jameson Inn in Pearl. Ann Doe and her friend were dropped off at the Tinseltown Movie Theater and subsequently left the theater with a male to go to the Jameson Inn to smoke marijuana. While inside a room at the Jameson Inn, Ann Doe was raped. Id. at (¶4-5). The Does subsequently filed a complaint against the Jameson Inn. Jameson Inn moved for summary judgment, arguing that it was undisputed that Ann Doe had been on the premises of the Jameson Inn to smoke marijuana and that she was a licensee. The trial court granted Jameson Inn's motion for summary judgement, finding that Ann Doe was a licensee and that none of the defendants breached any duty. Id. The Plaintiffs then appealed.

On appeal, the Mississippi Supreme Court noted that "The Does contend that the instant case is not only one of premises liability, but also a case of simple negligence." Id. at (¶9). The Does argued that pursuant to the exception created in Hoffman v. Planters Gin Co., 358 So.2d 1008, 1013 (Miss. 1978), Jameson Inn owed a higher duty of care than the standard duty of care owed to a licensee. The Court stated that the *Hoffman* exception has no place in determining whether a cause of action falls within the realm of premises liability versus that of simple negligence, and thus, a review of the facts of Ann Doe's claim was necessary. Id. at (¶10.)

The Court reviewed the facts and noted:

> "The injury of Ann, i.e, the rape, took place in a private room on the premises of the Jameson Inn. And the Does allege that Ann's injury resulted from the dangerous condition of the Jameson Inn. Since premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's premises as a result of 'conditions or activities' on the land, we find the trial court properly treated the Does' claim as one of pure premises liability. As such, we cannot hold the trial court in error on this point." Id. at (¶11.)

A recent case from the Mississippi Court of Appeals is closely on point. In Kendrick v. Quin, 49 So.3d 645 (Miss.App. 2010), Dixon died in a house fire while staying as a guest in Quin's home. Dixon's daughter, Kendrick, brought a wrongful death action against Quin alleging that Quin failed to get Dixon out of the house safely after Quin undertook to try to help Dixon. *Id.* at (¶5) Quin was purportedly sleeping when the house fire started and she was awoken by the fire alarm. Quin hurried out of her bedroom and went into the den to assist Dixon (who was recovering from a broken leg) out of the house. Quin instructed Dixon to hold onto her and she would lead him to safety. However, Quin became separated from Dixon and Dixon perished in the fire. *Id.* at (¶4). Kendrick appealed a summary judgment granted by the trial court to Quin.

On appeal, the Court of Appeals noted that Kendrick filed her complaint based upon the theory of premises liability, but abandoned that theory following discovery. "Kendrick then proceeded on the theory of simple negligence, averring that Quin had failed to get Dixon out of the house safely. Kendrick claimed that Quin had established a duty to assist Dixon when she told Dixon she would help him out of the house, and Quin breached that duty by leaving Dixon to fend for himself." *Id.* at (¶5)(emphasis added.) The Court rejected Kendrick's argument that a simple negligence standard applied, and held that Kendrick was limited to a premises liability theory. After establishing that Dixon was a licensee, the Court affirmed the trial court's grant of summary judgment because "Kendrick presented no evidence that Quin knowingly and intentionally caused the fire- the condition on her premises that caused Dixon's death. Nor is there evidence, from which reasonable minds could rationally conclude, that Quin willfully and wantonly caused Dixon to succumb to the fire." *Id.* at (¶14.)

In the case at bar, Ladner asserts essentially the same argument as the Plaintiffs in *Doe* and *Quin*, namely, that a simple negligence rather than a premises liability standard should be applied to Ladner's case.

In both cases, the Mississippi Supreme Court and the Mississippi Court of Appeals affirmed summary judgment to the defendant holding that the duty of care owed to a licensee was the correct standard to apply, and finding no evidence of willful or wanton conduct. Likewise, there is no evidence from which reasonable minds could conclude that Hollmen acted willfully or wantonly in such a manner as to cause Ladner to fall.

The Mississippi Supreme Court noted in *Doe v. Jameson Inn* that "...premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's premises as a result of "conditions or activities" on the land..." *Doe*, 56 So.3d at ¶11. As Ladner claims that her fall arises from an alleged activity of Holleman, her claim is one of premises liability. The lower court correctly found that Holleman did not willfully or wantonly injure Ladner, a licensee, and her claim was properly dismissed.

V. CONCLUSION

Ladner has failed to demonstrate that any of Holleman's actions caused her to fall while inside his home, because Ladner does not know what caused her to fall. Thus, Ladner's claim must be dismissed for failure to prove proximate causation. Ladner's assertion that the Lower Court incorrectly applied a licensee duty of care to her, and that the Lower Court should have applied a reasonable care standard, is likewise without merit. To accept such an argument would necessarily require that the Court abolish the invitee and licensee distinctions that are well grounded in Mississippi jurisprudence. Holleman respectfully requests that the Lower Grant's grant of his Motion for Partial Summary Judgment be affirmed.

WHEREFORE, PREMISES CONSIDERED, Appellee Michael Holleman respectfully prays that the judgment of the lower court granting Holleman's Motion for Partial Summary Judgment be sustained, with all allowable costs of this appeal to be assessed against the Appellant.

THIS the 7th day of September, 2011.

Respectfully submitted,

MICHAEL HOLLEMAN

By: _____
Edward J. Currie, Jr. (MSB [redacted]
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CERTIFICATE OF SERVICE

I, Jeremy T. Hutto, do hereby certify that I have this day caused to hand delivered, the original and three (3) true and correct copies of the above and foregoing instrument to the following:

Hon. Kathy Gillis
Clerk, Supreme Court of Mississippi
P.O. Box 249
Jackson, Mississippi 39205-0249

I further certify that I have this day caused to be mailed, via first class U.S. Mail, postage fully prepaid, a true and correct copy of the above and foregoing instrument to the following:

Honorable John C. Gargiulo
Harrison County Circuit Court Judge
1801 23rd Avenue
Gulfport, Mississippi 39501

William Alex Brady, II, Esq.
BRADY LAW FIRM, PLLC
520 E. Railroad Street, Suite B
Long Beach, Mississippi 39560

SO CERTIFIED this the 7th day of September, 2016.

JEREMY T. HUTTO